

Addendum No. 2
STATE FACILITY SOLAR POWER PURCHASE PROGRAM
REQUEST FOR PROPOSALS

RFP Released April 22, 2004

Date of this Addendum: May 6, 2004

The Department of General Services and the California Consumer Power and Conservation Financing Authority (the "Authority") released a Request For Proposals ("RFP") for a State Facility Solar Power Purchase Program on April 22, 2004.

The following material is intended to respond to the *most important or time-critical issues* raised at the April 29, 2004 bidders meeting and/or in written comments and questions received by May 3, 2004 at the California Power Authority. Beyond the answers and clarifications provided below, there are a number of *additional questions, comments, or requests for clarification* regarding other aspects of the RFP and the bidding process that will necessitate one or more subsequent addendum (addenda) that will follow.

Any questions concerning either the RFP or this Addendum No. 2 should be submitted in writing to: Mark Fillinger at solarrfp@dgs.ca.gov or by Fax to (916) 651-9595.

1. Schedule for Site Visits and Proposal Submission (pages 4, 5, 8, and 105)

The comments that we received generally suggested delaying site visits 1-2 weeks, and extending the final date for proposal submissions by 1-2 months (allowing 3 or more months for response from the date the RFP was issued, either initially or with revisions).

The CPA and DGS want to ensure that all interested bidders have a reasonable amount of time to consider the sites offered, to form teams, to prepare thoughtful bids, and to secure commitments of financing. At the same time, the host sites, the State government, and the industry would like to see the current enthusiasm and momentum for this opportunity maintained. Except as herein amended, all other terms and conditions shall remain the same.

Changes to the RFP are as follows:

Section 1.1 (page 4-5)

On page 4 - Change Site Visits:

*From: **Site visits** will be scheduled during the period May 5-19 (See Section 2.2 and Attachment 7 for details.) Bidders' attendance at site visits for the site or sites that they intend to bid is not mandatory. However, attendance at site visits is strongly advised. There is only one visit date available for each site. On this date bidders must obtain or request specific data, information, and answers to questions via physical inspection of the site. Information and*

answers to the questions posed that day will be shared with all bidders. Failure to attend a site visit is not license to submit site-specific questions that were not addressed during the scheduled site visit. Bidders are responsible for site-specific considerations of a proposed installation, regardless of whether they attended the site visit.

To: First Round Site Visits -- May 17-27, 2004 (subject to possible slight adjustments. See revised Attachment 7, below). Bidders' attendance at site visits for the site or sites that they intend to bid is not mandatory. However, attendance at site visits is strongly advised. This is the primary opportunity to see the sites, obtain more site-specific information than included in the RFP, and to pose site-specific questions. On this date bidders must obtain or request specific data, information, and answers to questions via physical inspection of the site. Failure to attend a site visit is not license to submit site-specific questions that were not addressed during the scheduled site visit. Bidders are responsible for site-specific considerations of a proposed installation, regardless of whether they attended the site visit. A summary of any additional site information provided (to the extent it lends itself to a PDF file, including scanable documents) and questions and answers will be provided to all registered bidders after the visits.

On page 4 - Add to Site Visits:

- **Possible Second Round Return Site Visits (June). These may be scheduled if registered bidders advise the CPA such return visits are needed for purposes of confirming measurements, physical data, and otherwise ascertaining design and installation details of the physical sites. These will not repeat the broader scope covered in the initial site visits, and will not have CPA and DGS headquarters staff managing the RFP in attendance. If held, these visits will be similar in scheduling to the first round, with a specific day and time designated for each site.**

On page 4 - Change date for questions:

From: Fax to Mark Fillinger, California Power Authority (916) 651-9595 through June 7¹

To: Fax to Mark Fillinger, California Power Authority (916) 651-9595 through July 27¹

On page 5 - Change date for Proposals:

From: Proposals must be received no later than 4 p.m. on Thursday June 17, 2004

To: Proposals must be received no later than 4 p.m. on Thursday August 5, 2004

Section 1.1.3 Anticipated Bidding Schedule (page 8)

Replace with the following new table:

Issue final RFP for third party solar PV	April 22
Pre-proposal meeting	April 29
Site visits (See Attachment 7)	May 17 – May 27
Possible second round site visits (TBD)	June (TBD)
Final proposals due	August 5
Qualified bidders announced	September 8
Price Bid opening	September 8
Mail letters of intent (LOI) to award	October 8
Solar awards announced	October 15
Commence CEQA process	October 15
Power Purchase and Solar License (SLA) agreements executed	See Solar License Agreement Exhibit G for implementation sequence

Attachment 7, Table 1 – Summary of Site Visit Dates and Times (page 105)

Replace Attachment 7 and Notes with the following:

SITE	CITY	DATE	TIME
UC Santa Barbara	Santa Barbara	Mon. 5/17	10:00 AM
CSU Long Beach	Long Beach	Tues. 5/18	9:00 AM
CSU Dominguez Hills	Carson	Tues. 5/18	3:00 PM
Metropolitan State Hospital	Norwalk	Wed. 5/19	9:00 AM
CSU Fullerton	Fullerton	Wed. 5/19	3:00 PM
Patton State Hospital	Patton	Thurs. 5/20	9:00 AM
Chuckawalla Valley State Prison ¹	Blythe	Fri. 5/21	9:00 AM
Ironwood State Prison ¹	Blythe	Fri. 5/21	9:00 AM
[Weekend]			
DGS Office Building	Santa Rosa	Mon. 5/24	9:00 AM
UC Office of the President	Oakland	Mon. 5/24	2:00 PM
Caltrans Office Building	Stockton	Tues. 5/25	10:00 AM
UC Santa Cruz	Santa Cruz	Wed. 5/26	10:00 AM
CSU Cal Poly	San Luis Obispo	Thurs. 5/27	8:00 AM

Notes:

1. Bidder's attending site visits at California Department of Corrections sites must supply the names and driver's license numbers of their staff that will be in attendance for access security clearance. Provide information via e-mail to RFP Primary Contact; see Section 3.0 Paragraph 3.1, at least ten business days prior to the scheduled site visit dates (**no later than close of business on May 7, 2004**).
2. See Table 2 on following page for site addresses, estimated PV installation sizes (where available), site descriptions and information on applicable public utility electric tariffs.

2. Form of Price Bid (pages 18-20)

Section 2.5 Form of Price Bid

Comments and discussion at the bidders meeting have raised the question as to what benchmark price should be used in the event a host Agency is currently on a Direct Access power purchase contract (that is not long-term), or elects in the future to move onto a Direct Access (or equivalent) energy purchase agreement. We offer the following responses:

- If an Agency that is currently on a published IOU tariff moves onto a Direct Access (or equivalent) tariff, the Solar Power Purchase Agreement will specify that for solar billing purposes, the bill will continue to be based on the prior (or equivalent) IOU tariff.
- For UC and CSU, who are already on a Direct Access contract, the effective tariff would be calculated as a discount to the fully bundled applicable tariff. For example, if the current Direct Access agreement results in a 10% discount to the otherwise applicable fully bundled utility rate, the same discount expectation would apply as the benchmark applied to future bundled utility tariffs, regardless of changes to the future Direct Access contract(s).

The actual language changes effectuating these understandings in the Solar Power Purchase Agreement (Attachment 5) will be published in a future addendum to this RFP, and summarized in an additional sub-section to be added to RFP Section 2.5.

3. Technical & Qualifications Criteria (page 23)

Section 3.4 Table 3-1 Technical & Qualifications Proposal Review Criteria (page 23)

The April 22, 2004 RFP states on page 23 minimum qualification requirements for the bidding team member who performs:

- a) solar system design and integration to have previously designed and completed a 250 kW or more equivalent system. and
- b) solar system installation to have installed at least one 250 kW system of similar type.

Discussion at the bidders meeting, amplified in written comments that we received, makes a persuasive case that solar electric systems are inherently modular, can be easily expanded in size, and that the

industry is still in its early stages in terms of the number and sizes of installed systems. Further, the majority of comments suggested that the most relevant criterion for experience is having installed a system under California's Self-Generation Incentive Program (SGIP, where the minimum size is 30 kW).

The goal of seeking qualifications from bidders in this solicitation for over a dozen state facilities, and in sizes expected to range from 250 kW to as large as 1 MW, is to ensure that the State selects and enters into contracts with experienced, competent solar design and installation professionals. We do not believe that having installed a single, 30-kW solar system is sufficient experience for awards of the magnitude we envision here.

Accordingly, we are revising the minimum qualifications on page 23 of the RFP to require that team members who will be proposed for both solar electric design/integration and installation must have installed a cumulative 150 kW of solar electric systems in sizes where each eligible system has a minimum size of 30 kW. These installations must be named, but need not have been installed under the California SGIP program, in recognition that team members may have performed equivalent installations in other jurisdictions.

Under II. Team Qualifications & Experience; A. System Design & Integration, third column, change:

From: Design/integration team proposed for this site previously has designed & completed a 250 kW or more equivalent system

To: Design/integration team proposed for this site previously has designed & completed a cumulative 150 kW of solar electric systems in sizes where each eligible system has a minimum size of 30 kW

Under II. Team Qualifications & Experience; B. Installation Qualifications/Experience, third column, change:

From: Proposed installer team for this site has installed at least one 250 kW system of similar type

To: Proposed installer team for this site has installed a cumulative 150 kW of solar electric systems in sizes where each eligible system has a minimum size of 30 kW

On page 23, Table 3-1: Change II. Team Qualifications & Experience to the following, as shown below with the change underlined.

Qualifications & Capabilities Considered	RFP Section Reference	Minimum Requirements To Pass
II. Team Qualifications & Experience		
<i>A. System design & integration</i>		
<ul style="list-style-type: none"> Specific design proposed for each site (materials, size, configuration, system efficiency) 	Proposal Form 1	<ul style="list-style-type: none"> Proposal Form 1 is complete
<ul style="list-style-type: none"> Total capacity of solar systems designed and completed, with emphasis on those technologies and mounting system(s) proposed here 	Section 5 - 2F	<ul style="list-style-type: none"> Design/integration team proposed for this site previously has designed & completed <u>a cumulative 150 kW of solar electric systems in sizes where each eligible system has a minimum size of 30 kW</u>
<ul style="list-style-type: none"> Experience with California's Rule 21 electrical interconnection 	Section 5 – 2C	<ul style="list-style-type: none"> Demonstrated experience with successfully obtaining Rule 21 interconnection in California
<i>B. Installation Qualifications/Experience</i>		
<ul style="list-style-type: none"> Numbers of projects and total capacity of solar PV installed by installer team, including familiarity with proposed panels, inverters, and mounting systems 	Sec. 5 - 2C & 2F; Section 5 - 3; Attach. 2; Proposal Form 3	<ul style="list-style-type: none"> Proposed installer team for this site has installed <u>a cumulative 150 kW of solar electric systems in sizes where each eligible system has a minimum size of 30 kW</u> Proposed installer team has necessary contractor's license(s)

4. Letter of Commitment from Funding Source

Section 5.8 Capital Finance Structure (page 42)

Several companies asked us to clarify what we want to see in the commitment letter from the funding source.

The letter should indicate an expression of interest in funding your specific project, the amount of funding that the source will provide for any/all projects to be funded, and information supporting the funding sources' ability to make such an investment. The letter should be as specific as possible, indicating an understanding of the key terms and conditions of the agreements. The State understands that there are many contingencies (including, but not limited to award of contract, receipt of final design approvals, confirmation of the level of incentives for each project, environmental reviews and

any associated cost impacts, etc.) that will not be known until a later date. The Commitment Letter(s) should indicate all significant contingencies to your funding source.

On page 42 - Change the fourth bullet:

From:

- *Commitment letter from anticipated funding source(s) and the credit rating of each funding source*

To:

- **Commitment letter from anticipated funding source(s) indicating:**
 - **interest in funding your specific project(s),**
 - **the amount of funding that the source will provide for any/all projects to be funded,**
 - **credit rating of each funding source,**
 - **any information that is attached to support the funding sources' ability to make such an investment, and**
 - **significant and specific contingencies associated with the commitment.**

5. Warranty Requirements on Solar System Components and Installation

Attachment 2 Minimum Technical & Installation Specifications (pages 47-50)

We received comments at both the bidders meeting and in writing asking us to clarify the warranty requirements on solar system components and installation, and to ensure that any such requirements are consistent with incentive program requirements and commercially available warranties.

The April 22, 2004 RFP states on page 48 that “systems expecting to receive incentive payments via the IOU Self-Generation Incentive program (or the CEC Emerging Renewables Program in the event of a system up to 30 kW)”, should “consult relevant warranty requirements of that program”. The SGIP program requires a minimum 5-year warranty on the entire system, including all major components and the labor costs associated with any repair or replacement of defective components or systems.

During the April 29, 2004 bidders conference we expanded on our understanding of this requirement by citing examples where solar panels are typically warranted for 20 or 25-years, and that a component such as an inverter, would need a series of warranties as this component is expected to be replaced once or twice over the solar system life.

Solar companies expressed concern about this expanded interpretation at the conference and again in written comments. We have reviewed our RFP language and the SGIP program documentation, and agree with the solar company comments. Warranty requirements are and will remain identical to those of the SGIP and CEC Emerging Renewables programs, essentially 5-years on the entire solar system. Additionally, there may be manufacturer warranties for certain system components that apply over a longer time period.

No change is required to the RFP language.

6. Performance Guarantee and Penalty for Non-Performance

Attachment 4, Proposal Form 2A - Price Proposal Description (page 58)

We received a number of comments that the solar bidder is naturally motivated to provide maximum solar production in order to achieve their expected revenues, and that the performance penalty provision is unduly onerous.

The RFP on pages 17-18 explains the required guarantee of minimum output performance, and associated penalty for failing to provide this performance. Further, on page 58 in Attachment 4, Proposal Form 2A - Price Proposal Description (page 2 of 2), we indicated that the penalty for failure to meet 90% of the guaranteed output performance would be applied at a level of 1.5 times the expected savings missed (up to the 90% guarantee level).

The State needs to ensure that the output performance level that a bidder offers is reasonably determined, since the selection of the winning bidder(s) is heavily dependent upon the quantity of solar power (and the associated price) offered for each site. Thus the State needs to retain the requirement for a guaranteed output performance, with some kind of penalty for guaranteeing a level of performance that cannot be delivered. As a compromise, we agree to reduce the penalty level to of 1.0 times the expected savings missed (up to the 90% guarantee level).

On page 58, Proposal Form 2A, page 2 of 2, box at bottom of page, change

From:

Expected performance output: The quantity of power that bidder commits to deliver each year to this site is: _____ (state first year quantity) with a _____ annual degradation factor.

Bidder guarantees a minimum output performance from the solar system each calendar year, at a minimum level equal to 90% of the expected performance output. This production guarantee is based on the bidder's best estimate of the solar irradiance available at the host site. Penalty for failure to meet this level will be payment to the State, or the State's "self-crediting", of *1.5 times* the expected savings missed, up to the 90% guarantee level.

To:

Expected performance output: The quantity of power that bidder commits to deliver each year to this site is: _____ (state first year quantity) with a _____ annual degradation factor.

Bidder guarantees a minimum output performance from the solar system each calendar year, at a minimum level equal to 90% of the expected performance output. This production guarantee is based on the bidder's best estimate of the solar irradiance available at the host site. Penalty for failure to meet this level will be payment to the State, or the State's "self-crediting", of 1.0 times the expected savings missed, up to the 90% guarantee level.

7. Contractor's State License Requirement

Attachment 4, Proposal Form 3 Contractor Documentation (page 60)

At the bidders meeting companies pointed out that the RFP's stated requirements for a Contractor's License do not match current practice, and requested clarification of this requirement.

The RFP on page 60 (Attachment 4, Proposal Form 3 Contractor Documentation) states our understanding of the Contractor's State License Board (CSLB) requirements for certain members of the expected bidding team to hold one or more specific contractor's licenses. This understanding was based on prior discussion with a CSLB staff member knowledgeable in license enforcement issues. The CPA requested further clarification of this issue from the CSLB, and learned that a C-10 or C-46 contractor can act as a "prime" contractor, with no A or B licensed contractor required, as long as the majority of the project is for the installation of solar electric systems, and where other trades (e.g. sheet metal, framing, towers, concrete pads) are "incidental and supplemental" to the solar installation. Accordingly we change the RFP, as indicated below.

Page 60, change section in middle of page

From:

License Requirements

The following license(s) is required for this solicitation:

- *At a minimum, the installation contractor must have a C-10 Electrical Contractor or C-46 Solar Contractor license.*
- *If any systems are installed pursuant to CEC incentives (e.g. up to 30 kW), the CEC's Emerging Renewables Program Guidebook" requires that contractors must have an active A (General Engineering Contractor, where applicable to unique projects), B (General Contractor), C-10 Electrical Contractor license, or a C-46 Solar Contractor license for photovoltaic systems. In addition, the CEC intends to require that contractors be certified to the testing requirements of the photovoltaic protocols of the North American Board of Certified Energy Practitioners once these protocols are finalized.*
- *For ground-mounted solar installations, a Class B license is required.*
- *Any company that sub-contracts installation work to a C-10 or C-46 contractor must have a "B" license.*

To:

License Requirements

The following license(s) is required for this solicitation:

- **At a minimum, the installation contractor must have a C-10 Electrical Contractor or C-46 Solar Contractor license.**
- **If any systems are installed pursuant to the CEC's Emerging Renewables Program (e.g. up to 30 kW), contractors must have an active A (General Engineering Contractor, where applicable to unique projects), C-10 Electrical Contractor**

license, or a C-46 Solar Contractor license for photovoltaic systems. In addition, the CEC intends to require that contractors be certified to the testing requirements of the photovoltaic protocols of the North American Board of Certified Energy Practitioners once these protocols are finalized.

8. Recapture of Costs or Losses in Case of Termination for Convenience in First 5 Years

Attachment 5 – State Of California Solar Power Purchase Agreement Major Terms And Conditions (Pages 66-76)

Section 17 Licensee Remedies (page 71)

We received comments regarding the special financial impact of an early termination by the State that might occur within the first 5 years. Specifically, bidders were concerned about any potential refund of SGIP funds and recapture of any tax benefits gained through accelerated depreciation. We agree to include language to mitigate the impact of such an event and specific documentable costs. Attachment 5 is revised as follows (new text underlined in bold section below):

From: Licensee Remedies: If Agency causes an Event of Default, Licensee shall have the right to a Termination Fee in the form of Liquidated Damages. For purposes of this Agreement, parties agree that Licensee's Liquidated Damages shall be calculated by multiplying the Net Installed Price of the System by a factor, the numerator being the full term of the SPPA (in months) minus the current month of the SPPA and the denominator being the full term of the SPPA (in months). For purposes of this Liquidated Damages calculation, parties agree that the Net Installed Price is the full cost of the System, less any incentives or rebates received. The Net Installed Price shall be confirmed by the calculations provided in the Self Generation Incentive Program application. Licensee shall provide Agency with a copy of the final approved documentation from the Self Generation Incentive Program to verify the approved project cost and incentive amount. Parties acknowledge and agree that in the Event of Default by Agency of this Agreement, Licensee's damages would be difficult or impossible to compute and that this Liquidated Damages provision represents the reasonable estimate of such damages established by the parties in good faith consideration of the facts and circumstances surrounding the transactions contemplated by this Agreement as of the effective date. Parties have initialed this Section _____ to establish their intent so to liquidate damages.

To: Licensee Remedies: If Agency causes an Event of Default, Licensee shall have the right to a Termination Fee in the form of Liquidated Damages. For purposes of this Agreement, parties agree that Licensee's Liquidated Damages shall be calculated by multiplying the Net Installed Price of the System by a factor, the numerator being the full term of the SPPA (in months) minus the current month of the SPPA and the denominator being the full term of the SPPA (in months.) For purposes of this Liquidated Damages calculation, parties agree that the Net Installed Price is the full cost of the System, less any incentives or rebates retained by Licensee. The Net Installed Price shall be confirmed by the calculations provided in the Self Generation Incentive Program application. Licensee

shall provide Agency with a copy of the final approved documentation from the Self Generation Incentive Program to verify the approved project cost and incentive amount. Parties also agree that if Agency causes an Event of Default (under Provision 13 above) or Termination for Convenience (under provision 9 above) within the first 61 months of the SPPA, Liquidated Damages shall also include payment by Agency to Licensee of any rebates, tax credits or incentives which Licensee can demonstrate are lost or must be repaid by Licensee, or penalties accruing to Licensee as a direct result of Agency's Default or Termination within the first 61 months of the SPPA. Parties acknowledge and agree that in the Event of Default by Agency of this Agreement, Licensee's damages would be difficult or impossible to compute and that this Liquidated Damages provision represents the reasonable estimate of such damages established by the parties in good faith consideration of the facts and circumstances surrounding the transactions contemplated by this Agreement as of the effective date. Parties have initialed this Section _____ to establish their intent so to liquidate damages.

9. Additional Clarifications

Q 9.1 Please clarify the requirements of a "Prime" or "Lead" Bidder, the terminology used for Other Team Members, and their Responsibilities

A-9.1 We agree with the numerous comments at the bidders' conference and subsequent written comments that clarification is needed in our use of terminology for various parties or entities that will be participating in proposals for this solar power purchase solicitation.

Moreover, we want to reiterate our expectation that proposals most commonly will include teams of individuals or firms fulfilling specific identified roles.

Accordingly, we offer the following definitions of terms, to help in the understanding of the RFP:

"Bidder", "lead bidder", and "prime bidder" all mean the company or individual that will be executing the Solar Power Purchase Agreement and the Site License Agreement with the State host site. This party will be the responsible party for fulfilling all agreements, terms, and conditions associated with the solar power purchase transaction for the term of the agreements. This is the party that should submit and sign the proposal.

"Bidding team" refers to ALL companies, parties, and individuals named as playing a role in the fulfillment of the services covered by the solar power purchase transaction, including the "bidder" and all entities described below.

"Capital team", "capital source", or "funding source" refers to the entity or entities that will supply the equity and debt finance required for the solar system(s).

"Financial (or financing) team" includes both financial advisors and capital sources.

"Installer", "installer team", or "contractor" refers to the entity who will install the system and must have the requisite California contractor's license(s) to perform this installation.

“Licensee” refers to the winning bidder for a particular facility (or set of facilities) who will obtain a license to install the solar system by signing the Solar License Agreement, and will sell electricity to the facility.

“Project manager” is the entity that will ensure the project is designed, permitted, installed, and commences operation. The project manager may also perform other functions described here.

“Solar system owner”, may be the bidder, capital source, or another entity, and refers to the entity that will hold title to the solar system.

“Successful bidder” or “winning bidder” refers to the bidder who receives from the State a Notice of Intent to Award a contract for one or more sites, and who then will be invited to proceed with solar system design and approvals, as well as execution of the Solar Power Purchase Agreement and the Solar License Agreement.

“System designer/integrator” or “designer/integrator”, or “design/integration team”—refers to those individuals or entities who will design the solar system, specify all components and balance of system equipment, and ensure the structural integrity and safety of the proposed solar system.

Q. 9.2 What is included in the “retail rate” as discussed in the RFP?

A-9.2. The retail rate includes the electricity generation or electricity commodity charges plus the delivery related charges (T&D plus others). For bidders including demand savings in their bid, the retail rate would also include demand charges. The retail rate does not include such costs as customer charges, special meter charges, or utility users' taxes. Moreover, the retail rate is not the host's total utility bill divided by their total energy consumption.

Q. 9.3 There was a comment expressing concern about potential costs associated with the need for a facility to re-roof after the solar system is installed.

A-9.3 One of the written comments that we received referred to the expectation that the bidder would be responsible for “re-roofing” a building hosting a roof-mounted solar system over the course of the agreement. We would like to clarify that the RFP on pages 14-15 refers to the installation of the roof-mounted solar system in such a way that once over the term of the agreement it may be necessary to move, or remove and reinstall, the solar system in order to accommodate the potential for the facility's roofing contractor to re-roof the facility. We are apprising the solar bidders that any expense associated with moving or removing and reinstalling the system to accommodate this event would be at the solar bidder's expense.

Q. 9.4 One party raised a written query objecting to the requirement for disclosure by a private company of financial statements in a bid package that could become public in its entirety.

A-9.4 The State has asked its attorneys to review the requirements for procurement documents from private companies under the Public Records Act and State procurement regulations. We will provide a response in a future addendum.